

GENERAL TERMS AND CONDITIONS OF BUSINESS

- FOR TRIMODAL TRANSPORTATION
- HANDLING
- STORAGE OF LOADING UNITS
- TECHNICAL CONTAINER SERVICE

■ PREAMBLE

Our general terms and conditions of business (Terms and Conditions) are intended to give ourselves and our business partners a common understanding of what CONTARGO stands for, and how and according to what rules we behave towards each other within our business relationship. The following basic principles are particularly important for us:

- We keep our agreements.
- We do anything for our customers, provided it is sustainable and legal.
- If something is not right we make it right, and we learn from our mistakes.
- Sustainability has the highest priority with us.

■ § 1 AREA OF APPLICATION

1 The General Terms and Conditions of Business apply for the entire CONTARGO Group, for the company CONTARGO GmbH & Co. KG and also for its affiliated and subsidiary companies at home and abroad. In the following text, the abbreviation "CONTARGO" is used for all companies within the CONTARGO Group.

2 The Terms and Conditions apply for all services provided by CONTARGO unless mandatory statutory regulations or mandatory international agreements are contrary to them.

3 The Terms and Conditions apply for all legal relationships arising from and in connection with contracts concluded with CONTARGO concerning the provision of forwarding services, the transport and handling of laden and/or empty containers, swap bodies, trailers and semitrailers, hereinafter referred to as Loading Units, as well as goods which are not in loading units, on the water and/or road and/or rail, together with interim storage or storage on instruction and handling at terminals, as well as for all legal relationships arising from and in connection with contracts concerning the performance of repair, maintenance and assembly work carried out on containers, swap bodies, trailers, semitrailers and the associated equipment, hereinafter referred to as Loading Units, even if the contracts concern only a part of a container, swap trailer, trailer, semitrailer or item of equipment.

■ § 2 BASES OF PRICE AND PERFORMANCE

1 CONTARGO retains the right to change prices accordingly, if following conclusion of the contract, price reductions or increases occur, in particular based on wage tariff agreements, changes in material prices, changes in insurance premiums, freight, demurrage, port charges or handling

tariffs. CONTARGO will prove these reductions or increases to the customer on request.

2 Prices stated by the customer are only binding for CONTARGO if they are confirmed by CONTARGO in writing.

3 The prices agreed between CONTARGO and the customer only cover the normal transportation, handling and administration costs, as well as material costs where applicable. 4 The customer is obliged to take over the low water and energy surcharges which may apply at any given time. 5 For repair, maintenance and assembly work carried out on containers, swap bodies, trailers and semitrailers or related equipment, prices are calculated on the basis that any waste material passes into the ownership of CONTARGO without remuneration.

■ § 3 FREIGHT CONTRACT, DATES, DELIVERY PERIODS

1 Statements of precise dates must be expressly agreed in writing by CONTARGO. In the case of dates which have to be set because of the particular nature of the product to be transported, the particular conditions for the product in question can be agreed individually and according to this section in the General Terms and Conditions of Business.

2 CONTARGO is entitled to commission subcontractors with implementation of the transportation, handling and storage in part or as a whole. CONTARGO is entitled to commission third parties with the repair, maintenance and assembly work in part or as a whole. If the legal relationships between CONTARGO and the third parties commissioned by CONTARGO should differ from these Conditions, only the conditions of the contract concluded between CONTARGO and the customer shall apply.

3 Quotations by CONTARGO for repair, maintenance and assembly of loading units are non-binding in every respect. Agreements in any case are only binding for CONTARGO if the offers of CONTARGO (Interchanges) are confirmed by the customer in writing. Solely the content of the contract fixed in writing applies, to the exclusion of all previous statements.

4 Assurances and similar which are not contained in the abovementioned order confirmation and/or changes to this order confirmation have to be in writing.

5 The decision on the scope of a repair to be carried out on containers, swap bodies, trailers or semitrailers or related equipment is the sole responsibility of the customer. CONTARGO is entitled to take the statement of a container inspection surveying agency as a basis for the work without verification.

■ § 4 DUTIES OF INFORMATION OF THE CUSTOMER

1 The customer must give all the information which is necessary for the transportation to CONTARGO before the start of loading. This information must particularly include the loading units according to Type and Number, weight and content and also condition and quality in the normally-acceptable form, and must also include all necessary accompanying documents, particularly those connected with port, customs, hazardous goods, waste material and health or other regulations. This information must be handed over along with the loading units. When cargo is to pass through and/or be delivered to foreignlanguage countries, the customer must supply all necessary translations on request.

2 The customer is responsible for the accuracy of the information supplied by him and for the accuracy of any translations as well as for the completeness of the paperwork. CONTARGO does not have the duty to check the information, or any statements made, or the paperwork, for accuracy and/or completeness. The customer is liable for all consequences which arise from the absence, the incorrectness, the inaccuracy or incompleteness of information or from late or incomplete transfer of information, even if no blame or fault is present; the same shall apply with regard to statements which are made. This does not apply to liability for damages where CONTARGO is to blame.

3 The customer alone is responsible for observance of customs and other official regulations. This also applies if CONTARGO takes over customs clearance or other dealing with the goods in relation to an official body or authority.

4 If a means of transportation is halted or prevented from commencing a journey as a result of the lack, inaccuracy or incorrectness of the declaration or the accompanying documents, non-observance of import, export and transit regulations or other legal regulations on the part of the customer and resulting official measures, or if the loading units are seized or other disadvantages arise as regards orderly dealing with the transportation, the customer shall be liable to CONTARGO for all resulting delays, damage, demurrage, detention, costs, fines, forfeits and other disadvantages as the joint and several debtor, regardless of whether the customer is himself at fault or not.

5 The customer is obliged to hold CONTARGO harmless with regard to any obligation to provide compensation for damages or loss which accrue to CONTARGO in connection with the order for transportation, unless the damages are based in the individual case on a fault on the part of CONTARGO, its employees or vicarious agents. The same also applies in relation to damage which occurs in connection with the transportation of substances which are hazardous to water and the environment, for which particular strict liability applies due to legal regulations.

■ § 5 WEIGHING OF CONTAINERS, VEHICLES OR OTHER MATERIALS

1 If in the context of a contract for forwarding/storage/carriage CONTARGO, having been explicitly instructed to do so, undertakes the weighing according to the SOLAS guidelines, this is an accessory obligation. The customer, as charterer, remains solely responsible for fulfilling the obligation arising from the SOLAS guidelines. In the case of slight negligence CONTARGO is not liable; § 24 remains unaffected hereby. Liability for a loss of data is limited to the typical costs and efforts of recovery, calculated on the damage which would have occurred if reasonable data protection measures had been undertaken.

2 In so far as the order contracted to CONTARGO consists exclusively of the weighing, CONTARGO will accept liability for fulfilment with the due care of a diligent businessman. In the case of a culpable breach of the duty of care CONTARGO is liable for resultant foreseeable damage typical of the contract, limited at the most to the amount of EUR 10,000.-. If the limitation of liability does not correspond to the foreseeable damage typical of the contract, the customer is obligated to inform CONTARGO of this in writing beforehand. If in a case of this kind another limitation of liability is agreed, this agreement must be in writing in order to be valid. § 24 remains unaffected hereby.

3 For the weighing, CONTARGO is entitled to a separate fee in addition to reimbursement of the necessary expenses.

■ § 6 HAZARDOUS GOODS

1 The term "hazardous goods" is understood to mean substances and objects which contain substances which, because of their nature, their properties or their condition, can, when transported, give rise to dangers as regards public safety or order, in particular for the general public, for important public property, for life and health of persons, for animals and other items. If hazardous goods are to be transported, the consignor is obligated to inform CONTARGO in good time in writing of the exact nature of the hazard and, where necessary, of the precautions that need to be taken.

2 Explosive goods (Hazardous Goods Class 1 – excepting Hazardous Goods Class 1.4S), radioactive goods (Hazardous Goods Class 7) and infectious substances (Hazardous Goods Class 6.2) are not transported by CONTARGO.

3 If hazardous goods are to be transported, the customer has the duty to inform CONTARGO in writing for each individual order at the time when the order is placed of the precise nature of the hazard and to provide all the necessary information and take account of all national and international regulations. The following information and documents are required in particular:

- a) Classification of the hazardous goods to be transported
- b) UN Number
- c) Confirmation that the quality of the goods, the packages and the loading units correspond to the regulations (ADR, ADNR, RID, IMDG-Code etc.)
- d) Designation and identification of the goods in accordance with the hazardous goods regulations, and also name of the product and technical designation
- e) Number of packages and total weight.
- f) Written instructions for behaviour in case of accidents or incidents (accident instruction sheet)
- g) Name and address of the consignor and the consignee of the goods
- h) Particular instructions for the carrier (e.g. particular instructions regarding routes)
- i) Note: Freight documents according to the IMDG Code may also be used for inland transport, if it is preceded or followed by sea transport.

4 If the customer or his agent has made incomplete or incorrect statements regarding the order involving hazardous goods to be carried out by CONTARGO (transport, storage, handling) or if the documents he or his agent has provided as required for the transport of hazardous goods are insufficient or incorrect, the customer shall be liable for all resulting damage. In this case the customer expressly holds CONTARGO harmless regarding all consequences and costs, expenses, penalty charges resulting from such damage.

5 If the customer does not deliver or collect the loading unit containing hazardous goods at the terminal on the day of the transport or within the requirement of the "24-hour Rule" or if the customer fails to instruct CONTARGO to store this loading unit at a suitable hazardous goods storage facility, CONTARGO is entitled a) to store the loading unit at

- a) suitable hazardous goods storage facility at the expense of the customer
- b) to unload, return or, in so far as necessary, destroy the goods or render them harmless, without being liable to pay the consignor compensation, and
- c) to require the customer to replace the expenses necessitated by this measure.

■ § 7 WASTE

1 In so far as the goods concerned (goods for transport, for handling, for storage) consists of waste or waste materials, when placing the order the customer shall inform CONTARGO in writing regarding the type, origin and possible characteristics of the goods and in particular shall give CONTARGO the Waste Code number according to the European Waste Catalogue (EWC). Acceptance of the goods for transport, handling or storage requires the explicit consent of CONTARGO.

2 Hazardous wastes are basically excluded from transportation, handling and storage.

3 Regarding orders for repairs, maintenance and assembly CONTARGO reserves the right to reject loading units with load and packaging residues if these are waste. This applies particularly to hazardous waste. Any transport costs incurred by their removal will be borne by the customer. The costs of treating and disposing of load and packaging residues will be charged to the customer separately on a time and material basis.

■ § 8 GOODS TO BE TRANSPORTED AT SPECIFIC TEMPERATURES (REEFERS AND TANKS)

1 The customer must state the specified temperature along with a tolerance range.

2 CONTARGO can refuse to take over the goods if the actual temperature deviates from the set temperature, taking the tolerance range into consideration, unless the customer frees CONTARGO in writing from any liability for maintenance of the temperature.

3 CONTARGO shall not be liable in the case that a refrigeration or heating unit fails, if CONTARGO took all the measures which were technically possible under the given circumstances and the load was nevertheless spoiled and rendered useless.

4 The actual and set temperatures shall be recorded in writing when CONTARGO takes over the load and when the load is transferred out of the sphere of responsibility of CONTARGO.

5 In case of transport by means of inland waterway and rail, CONTARGO undertakes to inform the customer immediately if technical problems should occur and to agree the further procedure with the customer.

■ § 9 TRANSPORTATION ROUTES, SELECTION OF THE MEANS OF TRANSPORT

1 Within the framework of these terms and conditions, CONTARGO accepts the obligation of transporting the container to the specified destination, to deliver it for reception or to store it with the care normally due from a prudent carrier or storage contractor.

2 Transportation is by means of ship, rail and truck, individually or in any combination of these, depending on the means of transportation decided upon by CONTARGO. CONTARGO specifies the sequence and route for transportation of the loading units taken over. The agreed price for the transportation does not change.

3 If it is in the interest of CONTARGO, CONTARGO is entitled, without informing the customer in advance, to reload the loading units completely or partially onto other means of transport, to lighten, to unload the units or to transport the units with other means of transportation and to store them in warehouses or in another manner.

4 CONTARGO is entitled to agree on dates with the consignor or consignee within the framework of the order which is placed. In so far as additional costs, in particular additional costs for the parking of the loading unit, occur as a result, the customer must be informed in advance; any additional costs which result are invariably charged to the customer.

5 Delivery of the loading units to the sea port is based on the instructions contained in the written transport order. If the specified seagoing ship is late, CONTARGO can adapt the delivery of the loading unit to the port to the delay in the arrival of the seagoing ship without the need to inform the customer in advance, or can deliver the loading unit on the date originally agreed.

6 CONTARGO can load the loading unit onto the means of transport or unload it from the ship itself or have it performed by a third party. In the latter case, the loading units must be transferred or accepted in a proper manner.

■ § 10 TAKEOVER AND RETURN OF LOADING UNITS

1 Loading units must be checked by the customer when they are taken over. If the loading units which have been provided are damaged or not suitable for transportation of the goods, they must be rejected immediately. The customer shall be responsible for all damage which is attributable to the loading of an unsuitable or damaged loading unit.

2 The customer must ensure that any loading units which are left with him following unloading are

in a perfectly satisfactory state, safe for transport, without any residues or remains of the goods which were loaded and that they are rePage turned to the agreed location. If, when the loading units are returned, it is established that they are not in a perfectly satisfactory, clean condition safe for transport, the necessary repairs will be carried out at the expense of the customer; any costs which occur during this time, e.g. loss of hire fees, must be borne by the customer.

3 The customer is responsible for ensuring that the loading units are safe from the operational and safety points of view at the time when they are taken over by CONTARGO, and that they are suitable for the goods in question. The customer is also responsible for ensuring that the loading units fulfil the current legal regulations and technical rules.

4 The customer is responsible for all damages which result from the unsuitability, lack of operational or transport safety of the loading units, and for any damages which result from the fact that the loading unit does not fulfil the relevant rules and regulations or is damaged, even if there is not any blame or fault on his part. This does not apply in so far as the defects in question are defects which were present in a loading unit which was supplied by CONTARGO, in so far as the defects were already present at the time when the loading unit was transferred to the customer or to a person authorised by the customer, but the defects were not recognisable to the customer or the authorised person.

■ § 11 PACKAGING, STORAGE OF GOODS, LOADING AND UNLOADING OF LOADING UNITS

1 The customer is under the obligation to transfer the loading units correctly stored at the loading site/site of transfer in order to protect against loss or damage and in order to protect against damage to persons, operating equipment or other goods in accordance with CONTARGO's instructions, and to ensure that the relevant regulations, standards and guidelines with regard to packaging, storage and securing inside the loading unit are observed for all

the means of transportation which can be considered for transportation of the loading unit.

2 CONTARGO is not obliged to check the packaging, arrangement and securing of the goods inside the loading unit when the loading unit is taken over.

3 By accepting the loading unit, the documents or any data transferred or communicated by the customer, CONTARGO does not confirm to the customer that the loading unit which has been delivered and the goods inside it are undamaged and that the type and the number of goods loaded agree with the information provided by the customer.

4 The customer must ensure that the loading units are supplied to CONTARGO properly closed

and, in the case of loaded loading units, that they are transferred sealed.

5 The customer must also ensure that the loading units are taken from the unloading site/site of consignment in the order determined by CONTARGO.

6 The customer can himself load, or can have loaded, the loading unit onto the next transportation means to be used, or the consignee can unload the loading unit or have it unloaded from the last transportation means to be used. In this process, both the customer and the consignee must observe the regulations and instructions of the respective carrier. The customer or the consignee shall bear the consequences of incorrect loading or unloading of loading units, in so far as they have not been caused by incorrect rules and instructions on the part of the carrier.

7 Delivery is deemed to have been affected absolving CONTARGO from further responsibility when the goods are handed over to any person present in the business or household of the consignee, unless there is good reason to doubt that person's entitlement to take delivery.

■ § 12 ACCEPTANCE FOR TRANSPORTATION

1 In so far as the loading unit is loaded by CONTARGO or its authorised agents, the time of acceptance is deemed to be the time when the loading of the loading unit onto the first of all used means of transport is started. Loading starts with the creation of the connection between the loading equipment and the loading unit.

2 In so far as the loading is carried out by the customer or his vicarious agents, the time of loading unit is correctly placed on the first of all used means of transport; the placement is complete as soon as the loading equipment and the loading unit have been separated.

3 If the loading unit is to be loaded with goods after the loading of the unit itself is completed with regard to these goods, acceptance has been completed by CONTARGO at the end of the loading, closure and sealing of the loading unit by the customer and takeover of the loading unit by CONTARGO.

■ § 13 HANDING OVER

1 With the transfer of the loading unit or goods to the recipient who is named as authorized recipient in the order (handing over), the obligation as regards transportation is fulfilled and the period of liability of CONTARGO is ended. The final consignee must confirm receipt of the loading unit or the goods in writing.

2 In so far as unloading is performed by CONTARGO or its vicarious agents, the time of the end of the correct unloading from the means of transport used last is deemed to constitute handing over; unloading is ended as soon as the unloading equipment is separated from the loading unit.

3 In so far as the loading unit is unloaded by the consignee or by his vicarious agents, the time when unloading from the last means of transportation which is started is deemed to constitute handing over; unloading begins with creation of the connection between the loading equipment and the loading unit.

4 If goods are to be removed before unloading of the loading unit, with regard to these goods handing over is deemed to have taken place when the loading unit was placed ready for unloading, at the latest when the doors of the loading unit were opened.

■ § 14 PARKING OF THE LOADING UNIT

Unless expressly required otherwise by the customer, loading units will be kept by CONTARGO or its agents according to standard practice in the sector.

■ § 15 MEASURES IN THE PRESENCE OF PARTICULAR HAZARDS

1 If risk to persons, other goods or the environment originates from goods which have been transferred to CONTARGO for the purposes of transport and/or storage, CONTARGO is entitled to unload or remove these goods from storage at any time and at any location without incurring any liability, without prejudice to its claim to the agreed freight.

2 Hazardous goods which are not correctly declared in contravention of the provisions of Section 6.3 (Hazardous Goods) can be unloaded by CONTARGO at any time and at any location, without the accrual of any liability to CONTARGO, and without prejudice to its claim to the agreed freight.

3 In the case of Paragraphs (1) and (2), the customer must bear all costs which are associated with the unloading/removal from storage; this also applies for any consequential damages accruing to CONTARGO which result from the unloading/removal from storage.

4 On request of CONTARGO, the customer is obliged to undertake the unloading himself in the case of Paragraphs (1) and (2); Paragraph (3), 2nd half of clause shall apply accordingly in this case.

■ § 16 HINDRANCES TO TRANSPORTATION

1 a) Hindrances beyond the control of CONTARGO release it for the duration of the hindrance from the performance of its duties which have become impossible to perform. In barge transport, an obstacle to transport exists if there is Low Water, as ascertained for instance by a water level measurement at the Kaub gauge of <80cm, insofar as the barge has to pass this point. In the case of a release from the performance of duties as described in sentence 1 of this section, CONTARGO and the customer are entitled to withdraw from the contract, even if the contract has already been partially carried out. If CONTARGO or the customer withdraws from the contract, CONTARGO is to be reimbursed for outlays which it could reasonably consider appropriate or which are of interest for the customer.

b) CONTARGO is only obliged within the framework of its ordinary professional care to advise the customer about legal or official restrictions concerning the shipment (e.g. import /export restrictions). If, however, CONTARGO, through public statements or in the course of negotiations, creates the impression that it has expert knowledge about specific circumstances, it has to act appropriately to this knowledge and expertise.

c) Governmental and/or official acts beyond CONTARGO's control do not affect CONTARGO's rights towards its customer; the customer is liable towards CONTARGO for all claims arising out of such acts. Claims of CONTARGO against the state or third parties are not affected.

2 During the entire duration of any of these events or circumstances, CONTARGO is entitled, at its discretion:

a) either to carry out the transportation and to charge the freight costs for the entire agreed transportation route;

b) or to withdraw from the contract completely and to charge for dead freight and to unload or have unloaded containers which have already been loaded at a location which seems suitable to CONTARGO at the cost and risk of the goods and then to store these containers, or to transport the containers on with other means. All additional costs, additional freight costs and expenses which are caused by unloading at an intermediate port, storage or onward transportation will be on account of the goods;

3 CONTARGO also has these rights if CONTARGO should neglect to inform the customer about the occurrence of the event.

4 Without correct, complete and timely communication by the customer of the data which is needed in accordance with Section 4 (Duties of Information), without supply of the declaration regarding hazardous goods in accordance with Section 6, the European Waste Catalogue code according to Section 7 and without a supply of information regarding the temperature for goods which have to be transported at certain temperatures according to Section 8, transportation cannot take place. In such a case, CONTARGO is released from the obligation of fulfilling the freight contract. Claims for damages due to delay or consequential damages cannot be made against CONTARGO in such a case. On the contrary, CONTARGO shall be entitled to assert a claim for payment in accordance with the provisions of Section 18 (Dead freight invoicing).

■ § 17 WAITING TIMES

1 The loading units are collected and delivered according to the transportation schedule or according to individual agreement. Waiting times resulting from dispatch for which CONTARGO is not responsible will be charged to the customer. Waiting times are deemed to be all times which exceed the unpaid time for loading and unloading at a terminal or a loading / unloading place as agreed in the individual case. Payment for waiting times is in accordance with the waiting time agreement within the respective tariff agreement per loading unit to be transported, for each individually agreed time interval which is commenced.

2 If it becomes evident after the goods have been accepted that long waiting periods will have to be expected at the destination terminal in the seaport for reasons which are outside the control of CONTARGO, CONTARGO is entitled, under consideration of the interests of the cargo participants, to approach a substitute terminal in the (sea)port of destination and to let the goods be unloaded there at the customer's risk.

3 When the customer is informed of this situation, he is obliged to instruct CONTARGO straight away as to whether CONTARGO should organise the transfer from the substitute terminal to the destination terminal in the customer's own name and on the customer's account.

4 If CONTARGO cannot obtain instruction within an appropriate time, CONTARGO has to take those measures which best protect the customer's interests. As well as transfer, CONTARGO is also entitled to entrust the goods to a third party for safekeeping. In this case CONTARGO is only liable, insofar as permitted by law, for exercising due diligence in the choice of a third party.

5 CONTARGO is entitled to claim reimbursement for the necessary expenses incurred by

all measures taken in accordance with paragraphs 3) and 4) and to claim appropriate remuneration, unless the obstacle is within the scope and control of CONTARGO.

6 Apart from this the provisions of § 419 HGB (the German Commercial Code) remain unaffected.

■ § 18 DEAD FREIGHT INVOICING

1 CONTARGO has a right to invoice the agreed freight costs until final destination, if:

a) the customer or his vicarious agents do not supply or only partially supply the agreed consignment, even after a suitable period of grace (not necessary in the case of fixed-time contracts);

b) the customer does not fulfil his duty to provide information according to Sections 4 (Duties of Information), 6 (Hazardous Goods), 7 (Waste) and 8 (Goods to be Transported at Specific Temperatures) before the start of the transportation, either in full or in part;

c) unloading of the loading unit is required at a terminal or the premises of a final customer which requires a shorter transportation route;

d) the continuation of the transportation is prevented permanently or for some period of time for reasons for which CONTARGO is not responsible;

e) the transportation is only performed in part, for reasons for which CONTARGO is not responsible, e.g. the means of transportation sinks or does not reach the destination for some other reason;

f) the goods have been destroyed, lost, seized, withdrawn, damaged, decreased or rendered worthless by some other means for which CONTARGO is not responsible.

2 CONTARGO is entitled to half of the payment which has been agreed for the transportation until final destination, if the customer cancels the order two working days before the transportation is due to start or declares that the transport has to be postponed temporarily or indefinitely.

3 It is not a prerequisite for the assertion of these claims that the vehicles are at readiness, or that the insufficient fulfilment of the contract is the responsibility of the consignor, the customer or the consignee; these claims also exist if the obstacle to the transportation is the result of one of the causes named in Sections 15 (Measures in the Presence of Particular Hazards) and 16 (Hindrances to Transportation), for which CONTARGO is not liable.

4 Claims for compensation for damages and demurrage, freight surcharges and also costs associated with general averages remain unaffected.

■ § 19 DEFICIENCY CLAIMS AND WARRANTY WITH REGARD TO REPAIR, MAINTENANCE, AND ASSEMBLY WORK PERFORMED ON LOADINGS UNITS

1 Loading units shall be inspected by the customer for defects during acceptance.

2 Recognisable defects shall be claimed in writing without delay. Defects which cannot be recognised even on careful inspection shall be claimed specifically and in writing without delay after the defect has been detected and at latest within 3 months of the delivery or acceptance date.

3 In the case of duly asserted claims for proven defects CONTARGO is obliged to perform repairs free of charge in the CONTARGO workshop.

4 Performance of a repair shall be deemed to be unreasonable if the expense involved exceeds the value of the original delivery item.

5 If the repair should be unsatisfactory CONTARGO is obliged to repeat it only once. If the repair is unsuccessful, is not performed within a reasonable period of time, is impossible to perform or cannot reasonably be expected to be performed, the customer may demand a reduction up to and not exceeding one third of the confirmed value of the order, or cancellation.

6 For material and services provided by third parties warranty is limited to the assignment of claims due to CONTARGO from the third party.

7 CONTARGO does not provide any warranty or accept any claims with regard to used loading units sold by CONTARGO.

■ § 20 ASSUMPTION OF LOSS

In order that loss can be assumed in accordance with Section 424.1 of the German Commercial Code (HGB) a further period of 30 days following the end of the delivery period shall apply uniformly for domestic and cross-border traffic and freight.

■ § 21 LIABILITY AS A FORWARDER

1 In all its activities, CONTARGO is liable in accordance with legal regulations. However, unless otherwise stipulated by mandatory legal requirements or otherwise specified in the provisions of these Terms and Conditions, the following regulations apply.

2 If CONTARGO is only responsible for arranging the contracts required for the services requested, its responsibility is limited to the careful choice of such third party service providers.

3 In all cases where CONTARGO is liable for loss of or damage to goods, its liability will be in accordance with Sections 429, 430 of the German Commercial Code (HGB).

4 If CONTARGO has a claim against a third party for damage for which it is not liable, or if CONTARGO has claims in excess of the sum for which it is liable, it must, on request, cede such claim to its customer, unless CONTARGO, by special agreement, had undertaken to pursue such claims at the cost and risk of its customer. The customer may also demand that CONTARGO cedes all claims against third parties to him. Section 437 of the German Commercial Code (HGB) remains unaffected. If the claims of the customer have been met by CONTARGO or its freight liability insurance, the claim to be ceded is limited to that portion which exceeds that already paid by CONTARGO or CONTARGO's freight liability insurance.

5 The liability of CONTARGO with regard to assignments involving the handling of containers and/or the provision of container transports is limited as follows:

a) For loss of or damage to goods under transport in the container the damage, with the exception of storage on instruction, is limited to 8.33 Special Drawing Rights (SDR) per kilogramme of gross weight of the consignment.

b) In case of damage to the container liability is limited to the repair costs; in the case of a write off (or loss) liability is limited to the fair value less the residual value. The liability of CONTARGO is limited in every case to a total of EUR 10,225.- per claim.

6 If only individual packages or parts of the consignment were damaged or lost, the maximum liability is calculated on the basis of the gross weight

- of the whole consignment, if it is rendered valueless,
- of that part of the consignment that is rendered valueless.

7 The liability of CONTARGO for damage other than to goods, excepting personal injury and damage to goods that are not subject of the contract of transportation, is limited to three times the amount payable for the loss of the goods, but in any case not more than EUR 100,000.- per claim. Section 431.3 and Section 433 of the German Commercial Code (HGB) remain unaffected.

8 In case of loss of or damage to goods the liability of CONTARGO per claim is limited, excepting storage upon instruction, to Euro 1 million or 2

SDR per kilogramme, whichever is the greater.

9 For the calculation of the Special Drawing Rights (SDR) Section 431.4 of the German Commercial Code (HGB) applies.

■ § 22 LIABILITY AS A STORAGE CONTRACTOR

1 CONTARGO is liable for loss which results from loss of or damage to goods in the time between acceptance for storage up to delivery, unless the damage could not be averted with the care normally due from a prudent businessman. This also applies if CONTARGO stores the goods with a third party in accordance with Section 472.2 of the German Commercial Code (HGB). The liability of CONTARGO is limited as follows:

2 to 8.33 special drawing rights (SDR) per kilogramme gross weight of the consignment – at the most however to EUR 10,225.- per claim.

3 If the claim of a customer is based upon the difference between the nominal and actual inventory the liability is limited to EUR 25,500.- irrespective of the number of events causing the inventory discrepancy. In both cases paragraph 23.2 of these Terms and Conditions remains unaffected.

4 Section 21.7 applies accordingly.

5 The liability of CONTARGO for damage other than to goods, excepting personal injury and damage to goods that are not subject of the contract, is limited in the case of storage upon instruction to EUR 10,225.- per claim. 6 In any case the liability of CONTARGO is limited to EUR 2 million per event, irrespective of how many claims are made in connection with an event; in the case of more than one claimant the liability of CONTARGO is proportionate to their individual claims.

■ § 23 LIABILITY AS A CARRIER

1 CONTARGO is liable for damage resulting from loss of or damage to the goods occurring during the time between the taking over of the goods and their delivery or resulting from delay in delivery.

2 If behaviour of the consignor or the consignee, or a particular defective condition of the goods, has contributed to the occurrence of the damage, the obligation to pay compensation and the amount of compensation payable depend on the extent to which such circumstances have contributed to the damage. CONTARGO shall be provided with an opportunity to inspect the damage.

3 If according to the contract of carriage loading units and/or other goods are to be transported within Germany, the statutory liability regulations set out in Sections 407 ff. of the German Commercial Code (HGB) apply. The liability of

CONTARGO per event is limited to the amount of 8.33 special drawing rights (SDR) per kilogramme gross weight; in the case of more than one claimant the liability of CONTARGO is proportionate to their individual claims. Liability with regard to each claim is at the most Euro 1 million or 2 SDR per kilogramme, whichever is the greater.

4 Liability of CONTARGO due to noncompliance with the period of delivery is limited to an amount equal to three times the freight.

5 In the case of trans-border transports of loading units or other goods, the duty of replacement shall follow the liability order which applies by compulsory law for the portion of the journey in which the damage occurred.

6 If CONTARGO is liable for the breach of a contractual duty connected with the performance of the carriage of goods, his liability for damage which has not resulted from loss of or damage to the goods or from non-compliance with the delivery period, and which is not damage to goods or persons, is limited also, namely to three times the amount payable in the event of loss of the goods.

7 In the case of trans-border transports by road and inland waterway respectively, application of the regulations of the CMR (road freight) and the stipulations of the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI) is mandatory.

8 If the portion of the journey in which the damage occurred cannot be ascertained, the liability of CONTARGO is in accordance with the rules of multimodal transport as set out in Section 452 of the German Commercial Code (HGB) with a provision of limitation of liability to 2 SDR per kilogramme.

■ § 24 NON-APPLICABILITY OF EXEMPTION FROM AND LIMITATION OF LIABILITY

The exemptions from and limitations of liability set out in sections 21 to 23 of these Terms and Conditions do not apply if

- a) the damage is due to the action or omission of CONTARGO, its executive or supervisory bodies, managers or vicarious agents, done with the intent to cause such damage, or recklessly and with the knowledge that such damage would probably result
- b) damages result from injury to life, body or health
- c) damages result from a breach of a cardinal obligation which has been committed by CONTARGO in its function as storage contractor (see § 22).

■ § 25 LIABILITY OF THE CUSTOMER

1 The customer, even if he is not at fault, shall compensate CONTARGO for damage and outlays caused by

- a) insufficient packaging or labelling,
- b) incorrectness or incompleteness of information entered in the bill of lading,
- c) failure to inform about the hazardous nature of the goods, or
- d) absence, incompleteness or incorrectness of the data or items of information mentioned in section 413.1 of the German Commercial Code (HGB),
- e) incorrect information and/or incorrect technical settings on the part of the customer when transporting/handling/storing temperature-controlled goods.

However the customer only has to compensate damages up to an amount of 8.33 special drawing units (SDR) for each kilogramme gross weight of the consignment; Section 431.4 and Sections 434 to 436 of the German Commercial Code (HGB) shall be applicable accordingly. The customer may not invoke exemptions from and limitations on liability if the damage is a consequence of an act or omission of the customer done with the intent to cause such damage, or recklessly and with the knowledge that such damage would probably result.

2 If conduct on the part of CONTARGO has contributed to causing the damage or outlay, the obligation to pay compensation and the extent of the compensation payable shall depend upon the extent to which CONTARGO has contributed to the damage and outlay.

3 In so far as containers for export are to be transported via the seaport, the customer is obligated if required to undertake an electronic pre-announcement of the accompanying customs documents of the containers in the Export Control System (or another designation for the system used by the relevant seaport) in good time before the arrival of the export container in the seaport. If this is not done the seaport operator will not accept the container. Additional resulting costs, such as for example transfer costs, storage costs, return costs or other costs shall be borne by the customer in full – without the possibility of the customer invoking the limitations of liability as set out above.

■ § 26 SPECIAL CASES OF EXCLUSION OF LIABILITY

1 CONTARGO is exonerated from liability in so far as the damage was due to one of the following risks:

- a) agreed or customary use of open, un-sheeted vehicles, or loading on deck;
- b) defective packing by the customer;
- c) damage to the transported goods caused by damage to and/or unsuitability of the loading unit, in so far as this loading unit was provided by the consignor or the customer;
- d) handling, loading, stowing or unloading of goods by the consignor or the consignee;
- e) the nature of the goods, which particularly exposes them to damage, especially through breakage, rust, decay, dessication, leakage or normal wastage;
- f) insufficient labelling of the packages and/or the consignment by the consignor and/or incorrect or incomplete order data
- g) transport of live animals and plants;
- h) damage to goods in closed and/or sealed loading units, if the packaging/the seals are undamaged at the time of handing over to CONTARGO;
- i) events or incidents which, with the exercise of ordinary care, could not have been foreseen by CONTARGO and whose occurrence and effects could not have been avoided;
- j) in the case of trans-border transportation of goods in inland navigation in the event of damage which has been caused by nautical error of the bargemaster, pilot or other person in the service of the vessel or of a push boat or tug boat, fire or explosion on board the vessel or due to defects existing on the hired or chartered vessel prior to the beginning of the journey, insofar as there is no gross negligence on the part of the ship's command;
- k) damage to the loading unit existing prior to acceptance by CONTARGO. On acceptance onto an inland vessel in the sea-port an interface control of the loading unit by CONTARGO or its subcontractor is not possible. Any existing damage can only be ascertained and communicated to the customer on the arrival of the inland vessel at the inland terminal.

If damage has occurred which according to the circumstances of the case could arise from one of the risks described in points 26 1 a) to k), the damage shall be deemed to have arisen from this risk.

2 CONTARGO is relieved of liability in so far as loss, damage or delayed delivery is caused by circumstances which CONTARGO was not able to

prevent even by exercising the utmost diligence, and whose consequences it was unable to avert.

3 Contributions to the general average are explicitly excluded.

■ § 27 NOTIFICATION OF LOSS

1 Where the loss or damage to the goods is apparent and the consignee or consignor fails to notify CONTARGO of the loss or damage on delivery at the latest, it is presumed that the goods have been delivered in a condition conforming to the contract. The notice must specify the damage sufficiently clearly.

2 The presumption referred to in paragraph shall also apply where the loss or damage was not apparent, provided there has been no notice within seven days of delivery.

3 Claims for delay in delivery shall expire if the consignee does not notify CONTARGO of the delay in delivery within twenty-one days of delivery.

4 After delivery any notice of damage shall be given in form of a text; transmission of the notice may be effected by telecommunication. Dispatch within the applicable notification period is sufficient.

5 If loss, damage or delay in delivery is notified on delivery, it is sufficient to give notice to the person delivering the goods.

■ § 28 EXCLUSION OF CLAIMS BY THIRD PARTIES

1 The customer shall ensure that no claims are made against CONTARGO except by himself.

2 The customer shall also ensure that no claim is made against an employee of CONTARGO or against another person used by CONTARGO in the fulfilment of the order placed with CONTARGO, by means of which liability of this person or the means of transportation which was used is to be established. This shall also apply if such a claim can be traced to fault on the part of these persons.

3 Without prejudice to the content of Paragraph 1 of this Section, all rights, objections and pleas which are permitted to CONTARGO by these provisions, also apply for the persons designated in Paragraph 2, as if they had been expressly agreed for these persons, whereby CONTARGO acts in their favour.

4 If, nevertheless, a claim excluded according to Paragraphs 1 and 2 of this Section is made, the customer undertakes to hold CONTARGO harmless as regards all consequences of such a claim.

5 The customer shall release CONTARGO from all damages and disadvantages which accrue to CONTARGO in so far as information supplied by the customer was untrue, incomplete or otherwise defective.

6 The provisions regarding exclusion and limitation of the liability of CONTARGO extend to claims made outside the framework of the contract.

■ § 29 INSURANCE OF THE GOODS

1 CONTARGO arranges for the insurance of the goods (e.g., transit or storage insurance) with an insurer of its choice if instructed to do so by the customer before the goods are handed over.

2 If, due to the kind of goods or for another reason, CONTARGO is unable to arrange cover for the goods which are to be insured, CONTARGO shall immediately inform the customer of this. CONTARGO is entitled, but not obliged, to effect the insurance of the goods if this is in the interest of the customer. An assumption that it is in the interest of the customer for CONTARGO to arrange insurance cannot be made if

- the customer expressly forbids such insurance cover in writing,
- the customer is a freight forwarder, carrier or warehousing company.

3 CONTARGO, after due consideration decides the type and scope of the insurance and arranges the cover at the usual market rates, unless the customer instructs CONTARGO differently, specifying the insured sum and the risks to be covered, in writing.

4 If CONTARGO is itself the insurance policy holder and if it acted for the account of the customer, CONTARGO is obliged, if requested to do so, to provide information about this. In such a case CONTARGO is obliged to invoice the premium for each freight forwarding instruction individually, to document it and to pay it to the insurer exclusively for this insurance cover.

5 CONTARGO is entitled to a special fee, apart from its reimbursements, for arranging the insurance, handling claims and other administrative tasks in connection with claims and averages.

■ § 30 GENERAL AVERAGE IN THE CASE OF WATER TRANSPORT

1 The Rheinregeln IVR as amended apply for the general average Section 700 of the German Commercial Code (HGB).

2 The general average statement will be opened and processed at the location determined by CONTARGO or by an average adjuster named

by CONTARGO. The entire cargo on board of the vessel shall participate in the general average.

3 The customer shall be liable to CONTARGO as joint and several debtor for all contributions made to the general average by the customer's goods.

4 CONTARGO is entitled to require a written undertaking for these contributions and also to require a cash contribution. If the requested cash contribution is refused or not paid on time, CONTARGO shall be entitled to exercise a lien on the containers and the cargo.

5 In each and every case in which the liability of CONTARGO is either excluded or limited CONTARGO is not liable to render contributions due from the customer even if the danger has been caused by the act, neglect or default of CONTARGO's servants or agents. Customers are not entitled to withhold payment of any such contributions or to set off against them any claims for damages or recourse. Right of retention as regards the general average contribution is expressly excluded.

■ § 31 PAYMENT, INTEREST AND OFFSETTING

1 All invoices of CONTARGO are payable within 10 days of receipt without deductions in the currency stated on the invoice.

2 The customer is in all cases the party with the duty to pay. If payment should be made by another party based on a special agreement, the obligations of the customer shall remain unaffected until the full amount has been paid.

3 CONTARGO is entitled to charge the legally-permitted rate of interest in cases of arrears of payment, from the start of the period when the payment is overdue.

4 Claims arising out of the forwarding contract and other related claims may only be set off against counter claims, if these are undisputed.

5 If circumstances occur following conclusion of the contract which cast doubt upon the customer's ability to pay, CONTARGO is entitled to demand security or payment in advance.

6 The customer agrees that claims which either CONTARGO or companies of the CONTARGO Group (enterprises of a group according to § 18 German law governing publicly-quoted companies (AktG) and enterprises at home and abroad with which CONTARGO is linked by at least 50 per cent) have against him belong to CONTARGO and said companies jointly and severally.

7 In the case of claims of the customer against CONTARGO or companies of the CONTARGO Group, CONTARGO and the companies of the CONTARGO Group may offset claims of CON-

TARGO and the CONTARGO Group. The customer renounces the right of objection in accordance with Section 396.1 Sentence 2 of the German Civil Code (BGB).

8 The above provisions shall also apply if on the one hand cash payment and on the other side submission of bills of exchange has been agreed upon, or if the claims of each side are due for settlement at different times, whereby settlement is by means of value setting. In the case of current payment processes, this entitlement relates to the account balance.

9 Complaints in relation to cargo, auxiliary costs and other costs can only be made within 6 weeks of receipt of invoice. If requested, the documents which are needed for proof shall be submitted.

■ § 32 LIEN, RIGHT OF RETENTION

1 With regard to all claims against the customer, due or not due, arising out of work done, CONTARGO has a lien and a right of retention as regards the loading units, goods or other items of value over which it has control.

2 If the customer loses his rights of disposal with regard to loading units which are in the possession of CONTARGO, CONTARGO has rights of retention in relation to the new party with rights of disposal until the debts owing to CONTARGO concerning the loading units have been paid.

3 In so far as the right of lien or retention extends beyond the right of lien or retention provided for in law, it shall only apply to such goods and items of value which belong to the customer.

4 When realising the value of a lien, CONTARGO can in all cases charge a sales commission on the gross proceeds at a rate which is considered usual at the relevant location.

■ § 33 LIMITATION PERIOD

All claims, irrespective of their legal basis, and in so far as mandatory statutory regulations do not require otherwise, shall be subject to a limitation period of twelve months. In cases involving intent or negligence equivalent to intent a limitation period of three years shall apply. The starting date of the limitation period shall be determined in accordance with Section 439.1 of the German Commercial Code (HGB). For suspension of the limitation period Section 439.3 HGB shall apply.

■ § 34 ELECTRONIC DATA TRANSFER AND PROCESSING

1 In so far as written form is specified in these General Terms and Conditions of Business,

this requirement is also fulfilled by the transfer of defined data sets within the framework of electronic data processing. Data transfer protocols within electronic data transfer only confirm transfer of the data.

2 The implementation and the binding nature of electronic data exchange with regard to contract and performance data is contracted with the customer in each individual case.

3 The data which are required in order to perform the orders are stored. Notice is hereby given in accordance with Section 33 of the German Data Protection Act (BDSG).

4 CONTARGO is entitled to pass on transport-related data for purposes of fulfilment of administrative and customs-related procedure.

5 In the absence of agreement to the contrary, CONTARGO is not obliged to invariably treat all order data as confidential.

■ § 35 CHOICE OF LAW AND LEGAL VENUE

1 All contracts concluded with CONTARGO shall be subject to German law.

2 The exclusive legal venue for all disputes with merchants in the legal sense, legal persons under public law or special funds under public law is Duisburg.

3 However, CONTARGO shall also be entitled to bring an action against the customer at the latter's place of domicile.

■ § 36 DEVIATING AGREEMENTS

1 Agreements deviating from these General Terms and Conditions must be made in writing.

2 Deviating conditions of contractual partners only apply if and when CONTARGO has expressly and in writing agreed to their applicability.

3 CONTARGO hereby expressly rejects the reference by contractual partners on forms to the partner's own business conditions.

■ § 37 SEVERABILITY AND SAFEGUARD CLAUSE

1 If any provision of these General Terms and Conditions is held to be invalid or unworkable, or if any provision should become invalid or unworkable, the validity of the remaining provisions of the General Terms and Conditions shall not be affected. In place of the invalid or unworkable provision, another valid and workable provision shall replace it whose effects are as close as possible to the economic objectives pursued by the contractual parties with the invalid or unworkable provision. The

foregoing provisions shall apply correspondingly in the event of gaps or omissions in the General Terms and Conditions.

2 These General Terms and Conditions of Business are available in German, French and English. In case of doubt, only the German version shall apply.